

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

:

Case No. 3:04-cr-095

Also 3:11-cv-034

-vs-

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

:

MEGED D. YISRA'EL,

Defendant-Petitioner.

REPORT AND RECOMMENDATIONS

This case is before the Court on Defendant Meged Yisra'El's Motion to Vacate under 28 U.S.C. § 2255 (Doc. No. 202). Upon initial review under Rule 4 of the Rules Governing § 2255 Motions, the Magistrate Judge found that the first three grounds for relief should be dismissed, but appointed counsel and ordered the Government to answer the fourth ground (Report and Recommendations, Order for Answer, Doc. No. 204).

No objection was made to the recommendation to dismiss the first three grounds and Judge Rice has adopted that recommendation (Doc. No. 210). On the fourth ground, ineffective assistance of counsel by reason of a conflict of interest, attorney Margaret Mary Quinn, appointed to represent Defendant, has reported to the Court that, after a thorough investigation described in her Response (Doc. No. 208), she can find no evidence to support the claim of ineffective assistance of trial counsel by Daniel J. O'Brien. The Magistrate Judge therefore ordered Defendant to show cause by May 15, 2011, why the fourth ground for relief should not be dismissed with prejudice for lack of any evidence (Doc. No. 209). Defendant has filed nothing in response.

It is therefore respectfully recommended that the fourth ground for relief be dismissed with prejudice and that judgment now be entered dismissing the entire § 2255 Motion with prejudice. Because reasonable jurists would not disagree with this conclusion, Defendant should be denied leave to appeal *in forma pauperis* and any requested certificate of appealability.

May 27, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is automatically extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(B), (C), or (D) and may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir., 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).